

REMARKS

Claims 24 and 25 are added, and therefore claims 10 to 25 are pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant thanks the Examiner for acknowledging the claim for foreign priority and for the acceptance of all the drawings.

Claims 10 to 12 and 16 to 18 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2002/0198632 ("Breed").

As to the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. *See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. *See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." M.P.E.P. § 2112; *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

As to Paragraphs [0416] and [0055] of the Breed reference, Paragraph [0416] does not identically disclose (or suggest) a first acceleration sensor, since it simply refers to a system that discusses leaving a roadway and reducing the speed of a vehicle and surrounding vehicles when an emergency occurs. (Breed, Paragraph [0416]). The Breed reference does not identically disclose (or suggest) a sensor or other arrangement for sensing the vertical acceleration of the vehicle, as provided for in the context of the presently claimed subject matter. As to Paragraph [0055], it refers to a cited passage from a reference, U.S. Patent No. 5,504,482 ("Schreder"), which discusses a satellite navigation system which provides information on the state of traffic. (Breed, Paragraph [0055]). Paragraph [0055] therefore does not identically disclose (or suggest) a second acceleration sensor used to measure acceleration in the horizontal direction, as provided for in the context of the presently claimed subject matter. The passage from Schreder refers to GPS satellite positioning systems that can provide three-dimensional vehicle positioning including acceleration, but it does not disclose or suggest the use of an acceleration sensor to do this. Therefore, Breed, citing Schreder, does not identically disclose (or suggest) the claimed subject matter.

Furthermore, Breed does not identically disclose (or suggest) a processor for detecting an inertial event as a function of the second acceleration. The Breed reference refers to a secondary reference, U.S. Patent 5,585,798 ("Yoshioka"), which discusses monitoring a load that is added to a central processor to judge the danger of obstacles to a CCD camera and a laser radar unit. (Breed, Paragraph [0131]). The Breed reference does not identically disclose (or suggest) that the processor receives and evaluates a signal of the horizontal acceleration of the vehicle to determine if an inertial event has taken place, and that if such an event has taken place, the processor receives and evaluates a signal from an acceleration sensor of the vertical acceleration of the vehicle to determine if a rollover has taken place.

Paragraphs [0055], [0131], [0416], [0295], and [0433] do not identically disclose (or suggest) a processor receiving and evaluating signals from acceleration sensors to detect a rollover. In Breed, the reference to an RtZF system for preventing rollovers, as in U.S. Patent Application No., 5,530,477 ("Henderson"), does not identically disclose (or suggest) the transmission and evaluation of a signal from an acceleration sensor to a processor to determine an inertial event, nor does Breed identically disclose (or suggest) the transmission and evaluation of a signal from an additional sensor to determine if a rollover

has taken place. (Breed, Paragraphs [0043]-[0044]). Therefore, Breed does not identically disclose (or suggest) the claimed subject matter.

Additionally, Breed does not identically disclose (or suggest) the processor triggering a restraint device as a function of the first and second signals. Cited Paragraphs [0569] and [0131] do not identically disclose (or suggest) triggering a restraint device by the processor. The Breed reference does not identically disclose (or suggest) the triggering of a restraint device by the processor, as provided for in the context of the presently claimed subject matter.

For the foregoing reasons, claim 10 is allowable, as presented, as are its dependent claims 11, 12, and 16 to 18.

Although page 2 of the Office Action indicated that claims 10 to 18 were rejected under §102(e), claims 13 to 15 were not specifically addressed in the §102(e) rejections, it is therefore assumed that only claims 10 to 12 and 16 to 18 were rejected under §102(e), and that claims 13 to 15 were rejected under §103(a), as indicated on Page 5 of the Office Action.

Claims 13 to 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Breed in view of U.S. Patent Application No. 2006/0100781 ("Lin").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some

articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 13 to 15 depend from claim 10, as presented, and they are therefore allowable for essentially the same reasons as claim 10, as presented, since the Lin reference does not cure -- and is not asserted to cure -- the critical deficiencies of the Breed reference.

*The Office Action did not address claims 19 to 23 in the Office Action. Claims 19 to 23 are therefore presumed allowable, and if these claims are found to not be allowable, a final rejection may not be made as to these claims.*

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also M.P.E.P. § 2144.03).

Accordingly claims 10 to 23 are allowable.

New claims 24 and 25 do not add any new subject matter and are supported by the present application, including the specification. Claims 24 and 25 depend from claim 19, and they are therefore allowable for the same reasons, since claims 19 to 23 were not rejected in the Office Action.

Accordingly claims 10 to 25 are allowable.

**CONCLUSION**

In view of the above, it is respectfully submitted that all of the presently pending claims 10 to 25 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

Date: 2/17/2010

By: 

Gerard A. Messina  
(Reg. No. 35,952)

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200

CUSTOMER NO. 26646

*neg. no.  
33,865  
Hera C.  
DEBITCH)*